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A brief Abstract of the CASE concerning the Letters Patents for Reprizals (hereunto annexed) against the States-General and their Subjects, whereupon Capt. Compton Gwyther, William Coates, Joseph Bullivant, John Baxter, Francis Wansell, Francis Martin, John Gibson, and William Jones, Prisoners in the Marshalsea, are to be Tryed for their Lives, according to the Common Law of England, on the 18th of Februry instant, upon the Statute of 28 Henry 8. cap. 15. under the pretence of PIRACY, for taking a Galliot-Hoy [called the Love of Rotterdam] laden with 160 Tun of Wine, and Prunes, on the 3^d of December last, bound from Bourdeaux to Dort : Faithfully Recollected out of all the Originals, by Thomas Smith Gent. With some Remarkable Observations both upon the Matters of Fact, and the Law in the whole Case.

IN the year 1635. King Charles the First being truly informed that the East-India Company of England had wasted several great Joynt Stocks, and not settled themselves in any Credible Factories in India, or parts adjacent of any considerable strength, since the first Erection of the said Company, but had rendred themselves subject to the apparent Insolencies and Injuries of the Dutch; whereupon Sir William Courten, Endimion Porter Esq; Capt. John Weddell, Nathaniel Mountney, Thomas Kynaston, Merchant, and their Partners, were importuned and encouraged by the King and Council to undertake Trading-Voyages to the Coast of India, China, and Japan : In which enterprize Sir Paul Pyndar advanced the sum of 36000 l. sterling, in the year 1636.

The East-India Company of the Netherlands foreseeing that it might lessen their Trade and Commerce in those parts, sought by all indirect ways and means to undermine and spoil the said Courten and his Partners, in their Trading-Voyages : whereupon the two Ships named the Dragon and Katharine, richly laden to the value of 200000 l. homewards bound from China and Japan in the year 1638. were lost and destroyed both Men, Ships, and Goods, and never heard of to this day.

In the year 1642. Sir William Courten being dead, William Courten his Son and Heir, and sole Executor, did with the rest of his Partners set forth (amongst other Ships) the Bona Esperanza, and Henry Bona Adventura, which were injuriously seized and taken by the Officers of the East-India Company of the Netherlands in the year 1643. and converted to their own use, to the damage of Courten and his Partners the sum of 151612 l. as by the said Letters Patents annexed appears.

Upon the Kings most happy Restauration, the surviving Partners, and the Heirs, Executors and Administrators of the rest of the Adventurers, addressed themselves in the year 1660. to the King for relief : whereupon a signal Compact and Agreement was made (after two years debate) between the King and the States-General, in the 15th. Article of the Treaty concluded at London, Anno 1662: That upon the Restitution of the Island of Poloron, and entire

satisfaction to be made to the parties Interested and Injured concerning the said two Ships *Bona Esperanza*, and *Henry Bona Adventura*, all other Offences, Injuries and Losses, suffered by the Subjects of *England*, should remain cancelled and extinguished.

Whereupon Sir *George Downing*, his Majesties Envoy Extraordinary to the *States-General*, in pursuance of the said Treaty, had several Conferences with the Deputies of the said *States*, and the *East-India Company* of the *Netherlands* in the *Hague*, to liquidate the said loss and damages, for the space of two years more, without any other effect, then an inconsiderable offer of *Two hundred thousand Guilders*, for the whole Spoil and Depredations; pretending they had paid some part of *Courten's* proportion in the year 1649. to *Jacob Peryens*, who had given security by *Peter Bondaen* to indemnifie the Company from the claim of Sir *Paul Pyndar* and Sir *Edward Littleton*, who had intimated their Right by *Jonas Abeeles* and a Publick Notary, in the year 1648. to the said *East-India Company* at their Chamber in *Amsterdam*, as by the several and respective Acts and Deeds may appear.

That the said *George Carew* in the Letters Patents mentioned, putting great confidence in his Majesties most sacred Covenants, and Grant under the Great Seal of *England*, sold his Mannor of *Annton*, alias *Aldington*, in the Valley of *Evesham*, with the Lands thereunto belonging, for the sum of 3800 *l.* to Mr. *Thomas Foley*, to satisfie Sir *William Powell*, *John Whisfield Esq;* *Henry Soam* and others, that had the Interest in Sir *Paul Pyndar's* and Sir *Edward Littleton's* Assignments, and the Deeds thereof, who refused to joyn with Mr. *Carew* in the prosecution of his Right against the *East-India Company* of the *Netherlands*, and other particular Inhabitants in *Holland* and *Zealand*; whereupon they assigned their Right and Interest to *Carew*, the Administrator of Sir *William Courten*, with his Will annexed.

In the year 1665. His Majesty and divers Ministers of State, having duly considered the great Services and Sufferings of Sir *William Courten* and Sir *Paul Pyndar* for the Crown of *England*, and their Loss and Damages of the *Bona Esperanza* and *Henry Bona Adventura*. Upon the application of the persons mentioned in the said Letters Patents, wherein His Majesty declares, That he was concerned in Honour and Justice to see them satisfied; after a years examination and debate of the whole matter by Sir *Robert Wiseman* and Sir *William Turner*, (Advocates General to His Majesty, and the Duke of *York*, Lord High-Admiral of *England* for the time being;) Assistants to Dr. *Exton* upon the King's Command in that Case, the Grant passed with those special Clauses of continuance, until satisfaction of the Debt and Damages, which was also controverted several months by the Lord Chancellor *Hyde*, before he gave his *Fiat*, who then injoynd the said *Carew* to give a Discharge to the Farmers of the Customs for 10000 *l.* due to him in right of Sir *Paul Pyndar*, which was paid to Mr. *Charles Cox*, Dr. *Robert Gayer*, and the Executors of Sir *William Udall*, *Elizabeth Feilding*, *Joas Godscall*, *Henry Marlb* and others, by Sir *Edmund Turnor*, upon the Accompt of Sir *John Wostenholme*, Sir *John Jacob* and Sir *John Harrison*; out of Mr. *Carew's* allowance granted by the King. The remaining part whereof being post-poned to this day.

In the same year *James Boeve* of *London* Merchant, by the appointment of Mr. *Carew*, delivered an authentique Copy of the said Letters Patents to Mr. *Vandam*, Advocate of the *East-India Company* of the *Netherlands*, and acquainted

acquainted him that there was such an Authority in the said Grant, compled with an Interest according to the Law of *England*, that could not be repealed or revoked, without satisfaction to the parties interess'd and injured; and therefore desired him to acquaint the Directors of the said Company to consider thereof, how to compose the Difference, being a matter of great weight and concernment.

In the year 1666. certain Creditors of Sir *William Courten*, Sir *Edward Littleton* and Sir *Paul Pyndar* importuned the said *George Carew* to have a particular Assignment of a third part of the said Debt and Damages so ascertained by the said Letters Patents, in lieu and satisfaction of their Debts, that amounted to 64320 *l*. sterling, which was, by consent of all parties, assigned to *John Graham Esq*; and *John Brown Gent.* on the 14th. of *May*, 1666. with power to recover the same by force of the Patent; as by the said Deed and Schedule of the Creditors Names, annexed thereto, appears.

In the same year several Attempts were made to reprice some part of the Debt and Damages in the Channel, and several Ships were brought in by force of the said Grant, but in regard it was in time of War, the *Dutchmen* traded under the Colours of *Hamburgers*, *Swedez*, *Oastenders*, and others in Alliance with *England*, that there was not so many Prizes condemned as paid the Charges of Equipping out Ships to take them; And the King wanting Seamen in that juncture, there was a suspension of any further Execution, until times of Peace, if the Debt and Damages were not in the mean while composed by the States, or the *East-India* Company of the *Netherlands*.

In the year 1677. A Treaty of Peace and common Alliance was concluded at *Breda*, between the King and the States; wherein it was mention'd generally, That all Offences, Injuries, Damages, and Losses, and all Actions and Pretences of either side, should be obliterated and disannulled, and all Letters of Reprizals, Marque and Countermarque comprehended therein:

That although the persons interess'd in the Letters Patents held themselves not obliged by the said Treaty, nor their particular Right included, as others, who had only a bare ambulatory Authority, revokable at the King's Pleasure, yet they did acquiesce for a time, being unwilling to obstruct the King's Affairs, after the most dreadful Fire and Plague in the City of *London*.

That in the year 1672. upon new differences between the King and the States, a second War was proclaimed, and the Treaty at *Breda* declared absolutely void, and of no effect; whereupon the Proprietors and Creditors addressed themselves again to the King and Council, That His Majesty would be graciously pleased to take care that they might have satisfaction and reparation for their Debt and Damages in a publick way, rather than by putting the Letters of Reprizal in execution, in all times of Peace: Then a select Committee of Lords of the Council, whereof the Earl of *Shaftsbury* was one, reported upon a Reference in this Case, That the States had cancelled all Obligations of past Treaties and Agreements, and left His Majesty and His Subjects as free in all Justice and Equity as if they never had been made, reciting the said Letters Patents and Debt stated therein. Wherefore it was just and seasonable for the King to insist upon Reparations for the Loss and Damages aforesaid; as by the original Order of Council, and Report thereupon (ready to be produced) appears:

In pursuance whereof, instructions were given to the Plenipotentiaries from the King to insist upon intire satisfaction in the next Treaty ; Then Mr. *Carew* having procured a Passport from the States Embassadors to travel through *Holland* with Mr. *John Sberland*, to sollicite that Affair by Order of the King and Council; they were apprehended contrary to the Law of Nations, and committed by the States of *Holland*, as Spies, and *Carew* condemned to be Executed, which had been effected if Mr. *Walkendonck* and Advocate *Sass* had not been, by way of Retortion, committed to the *Tower*, where they remained Prisoners during that War, as *Carew* and *Sberland* did in *Holland*.

That in the year 1674. a second Peace and common Alliance was concluded at *London*, between the King and the States ; upon a Compact and Agreement (amongst other things) that 800000 Pattacoons should be paid to the King, at four equal proportions by the States, 200000 whereof was paid (upon ratifying the Treaty) to *Alderman Backwel*, for other Services ; and the remaining three parts, which were to be paid in 3 years following, was by confederacy and combination, between the *Earl of Danby*, Lord High-Treasurer of *England*, and the States of *Holland*, assign'd to the Prince of *Orange*, for pretended Debts of his Father and Grandfather, contracted for sold Arms and Shipping upon the late King's Accompt, and no further provision made for the *Bona Esperanza*, and *Henry Bona Adventura*, then the durable Grant aforesaid, for Reprizals.

But in the said Treaty an Article was projected by the States, That the Treaty at *Breda*, and all former Treaties should stand in full force, without contradicting that Treaty, *Chatham* and the cancelled Obligations forgotten.

The Creditors and Proprietors being surprized at this sudden seperate Peace, caused protests to be made to the chief Magistrates at the *Hague*, *Amsterdam*, and all the principal Cities in *Holland* and *Zealand*, That if a considerable part of the Pattacoons were not assigned for the present towards the Debt and Damages relating to the said Ships, they should be necessitated to put in Execution their particular Letters of Reprizals, when the States should be at Peace with all Nations, that common clamours might not obstruct the due prosecution thereof.

That in the year 1676. several Actions at Law depending in the Ordinary Courts of Justice in *Amsterdam*, *Middleburgh*, and the *Hague*, at the Suits of the Administrators and Assignees of Sir *William Courten*, Sir *Paul Pyndar*, and Sir *Edward Littleton*, against *Jacob Pergens*, and the Heirs and Executors of *Peter Boudaen*, for Monies due upon Bonds, Bills of Exchange, Merchants Accompts in Partnership of Trade, and Legacies, amounting in the whole to 132000 *l. sterling*, (no ways relating to the said Letters Patents for Reprizals) being ready for Sentence, were positively Interdicted, by express order from the States of *Holland*, who prohibited the respective Judges from giving any Sentence in the said Causes, upon pretence that all particular Actions whatsoever were discharged and extinguished by the said two Treaties made and concluded at *Breda* and *London* as aforesaid ; from which Arbitrary Order the persons Interestted appealed to the *States-General*, to Reverse the said Order, being an apparent Breach of the Laws of Common Amity and Alliances : who answer'd, They could not intermeddle therein, the States of *Holland* being Sovereigns in their own Province.

Then

Then the Proprietors and Creditors appealed by two several Petitions to the King and Council, for Justice and Reparations in the case of the Letters of Reprizals, and the other Civil Actions depending at Law as aforesaid; whereupon two several Orders were made on the 24th of *July* 1677. that they should be heard on the 10th of *October* following, and that all persons concerned therein, should attend with their Council and Advocates; which they did accordingly, but could not then be heard, nor at any time afterwards, although they often and earnestly solicited the same; more especially the said *Carew*, who hath further expended 5000 *l.* and upwards, concerning the premisses, at home and abroad, for which his Estate in *London* and *Richmond* is in Mortgage, having paid Interest for the said Monies (so expended) many years together, to several eminent persons in the City of *London*.

That in the month of *April* 1680. the persons Interessed in the Debt and Damages so ascertained under the Great Seal of *England*, according to Law, agreed and prepared to fit out three small Vessels, with Men and Provisions, to Reprize what they could take towards their satisfaction and reparation: many Orphans and Widows being concerned in the same, that want their Bread which is eaten by Strangers.

Then Orders of the Council-Table issued out to the Lords of the Admiralty in an Arbitrary way, to stop all Men and Ships employed in that Service.

The Prince of *Orange* and the *States* insisting upon their broken and cancelled Treaties, importuned the Secretaries of State by their Ambassador, (ignorant of the Laws of *England*) to move His Majesty to Revoke the said Letters Patents by *Supersedeas*, which was sent into *Holland* under the Great Seal, without calling the parties by *Scire facias* Judicially to plead for themselves, or offering to refund any of the *Pattacoons*, (resting yet in the *States* hands at Interest) or making any other Compensation for the Debt and Damages aforesaid, so secured by Law: wherefore to prevent a failure of Justice, and not to suffer a President of such dangerous consequence to the Rights and Properties of the Subjects of *England*; the said Captain *Compton Gwyther*, Commander of the Ship called the *George Bona Adventura*, being ready fitted and entred in the Admiralty, according to the usual form and custom formerly observed, did in the month of *June* last, proceed upon his intended Voyage, having a Commission for that purpose.

The said Captain, after many difficulties, having met with divers Storms at Sea, spent most part of his Provisions, and sold several of his Guns and small Arms, in Harbour, many of his men deserting him, at last took the said Galliot Hoy, on the 3d. of *December*, 1680. near *Dungeness*, laden with Wine and Prunes, from *Burdeaux*, for *Dort*, being first assured that the said Ship and Lading belonged to the Subjects of *Holland*.

The said Ship being so taken, and the *Dutchmen* used with all kindness and humanity, who took with them on shore what they pleased to carry; the Captain intending to send the Bills of Lading, with one of his men, and one of the *Dutch*, to the Admiralty Court in *London*, in order to a Condemnation, keeping two of the Ships Company on board to be Witnesses to all their Actions; but meeting with further distress of Weather, was forced to sell four Tun of Wine, most part whereof being upon the Deck, to provide a Pilot, more Men, and Provisions: then coming to Anchor near *Cowes* Castle in the Road, the *Dutchmen* that were set

on shore applied themselves to *Daniel Gyles*, Marshal of the Vice-Admiralty in the *Ile of Wight*, promising him 100 *l.* if he would set out Boats with Souldiers to Re-take the said Ship and Lading from the said Captain and his Men, that had boarded and taken her; which he did accordingly, and having seized upon the said Captain, took away his Commission, and brought him and the seven men before mentioned Prisoners up to *London* on foot, pinnion'd together as Thieves and Robbers, having about ten days after his seizure procured a Warrant or Order of Council to that purpose, and committed them into the Custody of Mr. *Lomman*, Keeper of the Prison of the *Marshalsea*, on the first of *January* 1680. where *William Joyues* Marshal of the High Court of Admiralty, caused Irons to be put upon them for some time, until Mr. *Carew* desired the contrary, saying it was a sad return for all the Services and Sufferings of Sir *William Courten* and Sir *Paul Pyndar*, that had such vast Estates and Credits so employed for the benefit of their King and Country, unto whom the Crown of *England* stand engaged for 250000 *l. sterling*.

The said *Daniel Gyles* having taken the said *Galliot-Hoy*, with her Lading, out of the possession of the said Captain *Gwyther*, and Company, by an Arbitrary power, without any legal Warrant or Authority, and keeping the same by force, he was Arrested this *Hilary-Term* at the Suit of the Proprietors for 2500 *l.* damages; and also at the Suit of the Seamen in the *Marshalsea*, who had their Apparel, their Armes, and other necessaries taken from them by the Souldiers employed by the said *Gyles*: But the Judges of the Kings-Bench, (lately questioned in Parliament) upon the Motion of Mr. *Pollexfen*, discharged *Gyles* upon Common Bail, pre-judging the said Cause with that heat and partiality, threatening that the Captors should be Hang'd for acting under the said Letters Patents.

The seizure made by Captain *Gwyther* and his Company, was not done *Felo animo*, with a Felonious intent, having a Commission in the nature of a *Wiber-nam*; which was intended to be brought to Judgment in the Admiralty, by a determination of the Law, according to his Instructions in the Commission. So the selling of four Tun of Wine was not criminal, but a breach of Trust at most; and the taking the Ship and Wines out of the Captains possession by *Gyles*, was both an Assault and Trespass not answerable, the Wines being wasted and spoiled since in Sir *Robert Holmes* his Custody.

The *Galliot-Hoy* whereof *Sebastian Jansen* was Master, did belong to the Heer *Sebastian* Vice-Admiral of *Rotterdam*, who applies himself to the States of *Holland* for satisfaction; and they refer him to the *East-India* Company of the *Netherlands*, who call upon Mr. *Pergens* and *Bondaens*, that are caution to indemnifie them for 85000 *Gilders*, part of the damages for the *Bona Esperanza*, &c. and they move the Prince or States to allow part of the *Pattacoons* unsatisfied; so Justice follows them home to their own doors. *Jura natura equam est neminem cum alterius detrimento & injuria fieri locupletiores.*

Some Remarkable Observations both upon the Matters of Fact, and the Law on the whole Case.

IT is very remarkable and apparent, by the very Words both in the preamble and the body of the Letters Patents annexed remaining of Record, that the King was not surprized or mistaken in his Grant; But that by the common Law of *England* it was within his power and prerogative Royal to do the same of common

common right to his Subjects, under all those circumstances, conditions and limitations therein expressed and declared.

The persons interested in the *Bona Esperanza* were prompted (in the year 1664.) by several Ministers of State to bring in an Abstract of their Loss and Damages, with the State of their Case to the Committee of Grievances, which was done accordingly; The Chairman the next day reporting the same to the House of Commons a Vote passed to supply the King with five and twenty hundred thousand pounds: After that other supplies followed, to several millions, besides all the *Dutch Ships* taken by the King's Fleet, in order to the protection of his Subjects; for all which, and the large present to the Duke of *Tark* for his Conduct at Sea, this only Debt of 151612*l.* was stated and ascertained (for reparation with costs and charges) under the Great Seal of *England*, the highest Security of the Kingdom.

It is very observable, That the Proprietors and Creditors, which have waited with so much patience, to a miracle, or ever, That since the King's Restoration, they have not (by the judicial and durable Grant for Reprizals, nor by any other ways and means whatsoever) gotten half their Expences and incident Charges concerning the Premises: Wherefore they humbly hope, in due time to repair and satisfy themselves their Debt, Costs and Damages, by force of their Letters Patents.

*When the Grant passed to Carew, who had the Right and Administration in Law to the Damages, an Authority vested in him to compel the payment by force, which he could not do before; It is not a bare and ambulatory Authority that passed (as in every ordinary Commission) but an Interest of 151612*l.* coupled or joyned with an authority, whereby the King binds himself to see it satisfied paid; and the Reasons and Arguments why it should be so, and not otherwise, are unanswerable.*

1. It's granted, pro confesso, there was a real Debt and Damages contracted by the States.
2. There was a provision made in a publick Treaty, An. 1662. for a full and intire satisfaction and reparation for it.
3. That Carew, upon passing the Patent was enjoyned by the Lord Chancellor Hyde to release ten thousand Pounds due to him out of the Customs, in discharge of Sir John Wolstenholm's Debts, contracted upon the late King's Accompt, which were (bona fide) paid by Sir Edmund Turnor out of that individual Money, his name being used only in trust in the said Patent for Carew and others.
4. That several of Courten's, Littleton's and Pyndar's Creditors gave up their Bonds and Securities, for an assignment of a due proportion of the said Debt so secured by Patent, with power to put the same in Execution, when they see their own time and opportunity.

Yet, notwithstanding, the Ministers of State in this Age are not ashamed to wound the King's Honour and Reputation by their Arbitrary and Extrajudicial Orders of the Council-Table, with a pretended Superfedeas, and Proclamation, as forms and ways of repealing, recalling and revoking the said Letters Patents, so solemnly obtained under those considerations that cannot be extinguished, without satisfaction and reparations, by one side or the other.

It would be a President of the most dangerous consequence in the world to all civil Society and Commerce, if it should rest in the King's Power or the States to take away the Subjects right and remedy, without a compensation.

The Law of England is positive in it, that there can be no other ways to repeal or make void the King's Letters Patents, than by judicial proceedings, either by Inquisition or a *scire facias*, that the parties concerned may have liberty to plead and defend their own Right, which they cannot do unto a White-Hall Superseas or Proclamation. The Lord Coke in his Reports says, that an Indictment is not to be concluded contra Regiam proclamationem, but contra Leges & Statuta, &c. for the King cannot create an offence by his Proclamation, which was not an offence before, for that would be to change the Law. And in the fourth part of his Institutes, cap. 8. p. 88. treating of the Jurisdiction and Office of the Lord High Chancellor of England, and the Judgments concerning cancelling of Letters Patents by *scire facias*, says, *Quod predicta litera patentes dicti domini Regis revocentur, cancellentur, evacuentur, annullentur, & vacue, & invalida pro nullo penitus habeantur, & teneantur; ac etiam quod irrotulamentum eorumdem cancelletur, cassetur, & adnibiletur, &c.* And all this is to be done judicially, by hearing the parties, and not by any Order of Council, Superseas, or Proclamation: which the King or States may do by *scire facias*, when the Debt is paid, recovered or compounded.

By the grand Charter of England, confirmed by so many Acts of Parliament, (wherein the King is a party) no man shall be disseised or destroyed but by legal trial, nor Justice denied or delayed, but right preserved by the Law of the Land: And the King and his great Ministers of State are sworn to observe the same accordingly.

Admitting a Foreign Sovereign Prince, granting Letters Patents for Reprisals to a Corporation of his Subjects, against a Sovereign State that had spoiled them of their Ships and Goods to the value of a million of Rix Dollars (under the same circumstances) that the Grant should continue effectual in the Law, until the Debt and Damages should be recovered. Afterwards the said Prince and State treat together, and settle a common Alliance, upon a sum of Money given to the said Princ, without mentioning the particular Grant to the said Corporation of his Subjects, for the Rix-dollars and then becomes insolvent (admitting the said Prince or his People are the Debtors;) And the Corporation (unsatisfied) puts in Execution against the said State, the Letters Patents remaining inrolled in the Supreme Court of Judicature upon Record, and takes Ships to the value of the Spoil and Damages mentioned in the Patent.

The Question is, *Whether it would not be deemed an act of Inhumanity against the Law of Nature in the State to prosecute any of the persons, or their Agents, (they had formerly spoiled) for their Lives as Pirates, acting under the said Patent, and coming under the Power of the said State? Or whether it would not be an abomination and most horrid act in the Prince, or his Ministers, to prosecute those for Pirates, that he himself or his People ought in Conscience, Reason and Equity to satisfy?*

No men can be safe in their Lives, Liberties or Estates under a Government where there is a failure of Justice, that the Subjects cannot be protected according to the Laws of God and their Country.

Fiat Justitia, pereat mundus.

Actum per T. S.
Feb. 12. 1680.

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